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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,540	12/31/2003	Richard F. Gladney	SMCY-P02-099	5566

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

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10/01/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/750,540	Applicant(s) GLADNEY, RICHARD F.	
	Examiner FREDRICK C. CONLEY	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/22/10 has been entered.

Specification

The amendment filed 9/22/10 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The remaining portion underneath the bottom panel being substantially in contact with the bottom surface yet unattached by at least an adhesive to the bottom panel.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 14-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter as stated above which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-18, 20-21, and 23-27 are rejected under 35 U.S.C. 103(a) as obvious over. U.S. Pub. No. 5,065,485 to Zocco.

Claims 14 and 16, Zocco discloses a mattress comprising
a substantially rigid bottom panel/platform (10) consisting of foam;
a perimeter sidewall (1) joined to the bottom panel, said bottom panel and
perimeter sidewall defining an interior cavity; and
an innercore having a bottom surface 3 disposed within the cavity,
wherein said portion of the bottom surface of the bottom surface of the innercore
is joined to the bottom panel by an adhesive wherein the adhesive applied in a region
proximate to the perimeter of the side wall with a remaining portion capable of being
substantially in contact with the bottom surface yet unattached to the bottom panel (col.
3-4 lines 64-68 & 1-2). Alternatively Zocco is silent to a remaining portion capable of
being substantially in contact with the bottom surface yet unattached to the bottom
panel. It is considered an obvious modification to merely select a portion of the bottom
panel that does not have adhesive and it would have been obvious for one having

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ordinary skill in the art at the time of the invention to have a region unattached to the bottom surface yielding predictable results that provide a select region of attachment.

Claims 15 and 24, wherein the inner core is a fabric-encased spring coil (4,5).

Claim 17, wherein the platform comprises a plurality of layers (fig. 1).

Claim 18, wherein the mattress is a two sided mattress, with the platform capable of forming a second sleeping surface.

Claims 19 and 22, Zocco discloses all of the Applicant's claimed limitations except for the platform comprises a high density polyurethane foam having a density of approximately 1.85 lbs./cu.ft. and a firmness above 30 ILD. It is considered an obvious modification to select from a plethora of known materials with densities and firmness within a range of values and it would have been obvious for one having ordinary skill in the art at the time of the invention to select the foam with the density and firmness as stated above in order to provide suitable support for the user.

Claim 20, further comprising an upholstery layer 101 disposed over a top surface of the innercore.

Claim 21, wherein the perimeter sidewall is made of foam (col. 3 lines 50-52).

Claim 23, wherein the bottom panel forms a substantially rigid base platform that comprises a layer made of foam and providing support to the innercore (col. 3 lines 56-63).

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Claim 25, wherein the innercore comprising a block of resilient foam 3 (col. 3 lines 63-66).

Claim 26, wherein the perimeter sidewall is attached to a peripheral region of a major surface of the bottom panel by an adhesive (col. 3 lines 53-55).

Claim 27, wherein the perimeter sidewall comprises a plurality of sidewall sections (1a,1b).

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,065,485 to Zocco in view of U.S. Pat. No. 6,263,533 to Dimitry et al.

Claim 28, Zocco discloses the Applicant's claim limitations except for a wire. Dimitry discloses border wires (24,26). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a wire as taught by Dimitry in order to create a frame about the upper and lower edges of the inner spring (col. 3 lines 34-37).

Response to Arguments

Applicant's arguments filed 9/22/10 have been fully considered but they are not persuasive. As previously state, Zocco explicitly recites that "the first layer of filling material (3) may be glued to the inside surface of the bottom panel (10)". Zocco does not disclose any other member of the mattress being glued to the bottom panel (10)(col. 3-4 lines 64-68 & 1-2). Zocco states that the perimeter side wall members (1a,1b) are only glued together, and does not disclose adhering the side wall members to the bottom panel as suggested by the Applicant. Therefore Zocco meets the Applicant's claim language "wherein said portion of the bottom surface of the bottom surface of the innercore is joined to the bottom panel by an adhesive wherein the adhesive applied in a region proximate to the perimeter of the side wall. With regards to a remaining portion underneath the bottom panel being substantially in contact with the bottom surface yet unattached by at least an adhesive to the bottom panel. PRINCIPLES OF LAW "Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). "If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *Id.* at 1740. One having ordinary skill in the art would not have found it novel to merely leave a portion of the bottom surface unattached by the adhesive.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is (571)272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PETER CUOMO can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/FREDRICK C CONLEY/
Primary Examiner, Art Unit 3673